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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,335	09/24/2001	Kenneth A. Klarfeld	MET2.PAU.23	2141
23386	7590	02/22/2008	EXAMINER	
MYERS DAWES ANDRAS & SHERMAN, LLP			BROWN, RUEBEN M	
19900 MACARTHUR BLVD.,			ART UNIT	PAPER NUMBER
SUITE 1150				
IRVINE, CA 92612			2623	
MAIL DATE		DELIVERY MODE		
02/22/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/963,335	KLARFELD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Reuben M. Brown	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 1/7/2008.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 20-32 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 20-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/ are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/7/08.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims have been considered but are not persuasive. Applicant argues on 7 that in the present invention, "the viewer is given the opportunity of providing feedback after being presented with a program list based on the viewer characteristics and then being presented with an alternative list based on alternative viewer characteristics of the viewer profile". Examiner does not find any recitation in the claims that recite such a feature.

The independent claims merely require, (1) process preferences of viewer to develop viewer characteristics profile; (2) store the viewer characteristics profile; (3) present the viewer with a list of TV programs, such that the TV programs are selected and arranged based on the instant viewer characteristics profile; (4) viewer makes selections; (5) present the viewer with a list of alternative TV programs available, such that the alternative programs are selected and arranged based on an alternative viewer characteristics profile.

It is noted that claim 20 does not state the viewer selections in (4) are made from the list of programs in (3). Secondly the claim does not require any specific "feedback", as argued.

Third, the claims does not recite where/how the ‘alternative viewer characteristics profile’ is generated.

It is further noted that claim 21 recites that the ‘alternative viewer characteristics profile’, is from the same viewer, which at least reads on Herz, col. 17, which teaches that a customer may have different profiles based on the time of day/mood. Also see col. 29, lines 1-26.

Moreover, claim 22 recites that the ‘alternative viewer characteristics profile’ is for a different viewer. This subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Applicant argues on page 8 that Shaffer and Herz teach away from each other. Examiner respectfully disagrees and points out that the references are both directed to presenting programs to a viewer that he/she would most likely want to view based on their viewing history.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 20-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, (U.S. Pat # 5,758,257), in view of Shaffer, (U.S. Pat # 6,704,931).

Considering claims 20 & 28, the claimed method of displaying a TV program to a viewer, comprising processing information indicative of preferences of the viewer to develop a viewer characteristic information profile for the viewer is met by Herz, col. 10, lines 6-55; col. 11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

Storing the viewer characteristics information profile on a viewer storage device, is met by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. Presenting the viewer with a list of TV programs available for viewing, the programs **selected in accordance** with the characteristics information profile, is met by Herz, col. 45, lines 34-50.

Receiving input from the viewer requesting different selections, col. 45, lines 34-60. Presenting the viewer with a list of alternative TV programs for viewing the alternative list selected in accordance with an alternative characteristics information profile, is met by the disclosure in Herz that more than one customer profile maybe stored at the STT, from which the user may receive a different list of suggested programming, col. 45, lines 55-67 thru col 46, lines 1-20.

As for the amended claimed feature of the list of TV programs being **arranged in accordance** with viewer characteristics information, Herz does not explicitly teach such a feature. Nevertheless, Shaffer, which is in the same field of endeavor provides a teaching of arranging a listing of recommended programs, by ranking according to their recommendation score, (Fig. 2; col. 3, lines 1-54). It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of organizing a list by ranking according to score, at least for the improvement of allowing the viewer to see the list of programs in an order in which the programs that match the customers profile the best are clearly indicated by rank, as shown by Shaffer.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for prestige TV programs to a viewer, comprises steps that correspond with subject matter mentioned above in the rejection of claim 20, and is likewise treated. As for the additional feature, 'without viewer input' Shaffer still meets the language since the rankings are based on recommendation scores, as opposed to a specific viewer input.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Any response to this action should be mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-7290 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reuben M. Brown



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